

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF:	*	
KOREAN COMMUNITY SERVICE CENTER	*	
OF GREATER WASHINGTON, INC.	*	
Applicant	*	
Phillip S. Cho	*	
Elizabeth Kim	*	
Somer Cross	*	
For the Application	*	OZAH Case No. CU 17-12
<u>Soo Lee-Cho, Esquire</u>	*	
Attorney for the Applicant	*	

Michael Glasby	*	
Winston Thames	*	
Julio Gonzalez	*	
Concerned Neighbors with Comments	*	

Before: Martin L. Grossman, Hearing Examiner		
Director, Office of Zoning and Administrative Hearings		

HEARING EXAMINER’S REPORT AND DECISION

TABLE OF CONTENTS

I. STATEMENT OF THE CASE	2
II. FACTUAL BACKGROUND	4
A. The Subject Property	4
B. Surrounding Neighborhood	6
C. Proposed Use	9
1. Site Plan.....	10
2. Parking Facility Waivers Proposed by the Applicant.....	12
3. Site Landscaping, Lighting and Signage	15
4. Internal Physical Arrangements for Site Operations	16
5. Operations.....	17
D. Community Response.....	17
III. FINDINGS OF FACT AND CONCLUSIONS OF LAW	20
A. Necessary Findings (Section 59.7.3.1.E.)	20
B. Development Standards of the Zone (Article 59.4).....	30
C. Use Standards for a Private Club, Service Organization (Section 59.3.4.8.)	30
D. General Development Standards (Article 59.6)	33
1. Site Access Standards.....	33
2. Parking Spaces Required, Parking Facility Design and Parking Lot Screening	33
3. Site Landscaping, Screening and Lighting	37
4. Signage	39
IV. CONCLUSION AND DECISION	39

I. STATEMENT OF THE CASE

On December 28, 2016, the Applicant, Korean Community Service Center of Greater Washington, Inc. (hereinafter, the “Korean Community Service Center”, “KCSC” or “KCSCGW”), filed an application for a Conditional Use pursuant to Zoning Ordinance Section 59.3.4.8. to allow operation of a Private Club, Service Organization in the above-grade basement of the existing one-family, detached house at 700 Buckingham Drive, in Silver Spring. The existing special exception on the site, S-1591 (Exhibits 9 and 10), which allows a non-resident medical practitioner’s office on the property, would be revoked as a condition of the conditional use. Upper floors of the property would continue as a residential use.

The Subject Site is Parcel P328 of the Hills & Dales Subdivision, and it is owned by the Applicant, per Maryland tax records – SDAT Tax ID No. 13-00959152 (Exhibit 21). The property is zoned R-60, and a Conditional Use is required for a private club, service organization in the R-60 Zone. The site is in the area subject to the *2000 East Silver Spring Master Plan*.

As described by Technical Staff (Exhibit 29, p. 3), the Applicant “is a non-profit organization that provides comprehensive services to Asian Americans, both citizens and recent immigrants, in the Washington area. They provide a variety of services in the fields of health, immigration, elder care, and family support programs. Cultural and linguistic programs to address language barriers in housing, job placement, and other social needs are also offered. The headquarters is in Annandale, Virginia, with 3 branch offices in suburban Maryland. The proposed use will be another branch office of KCSCGW.”

The Office of Zoning and Administrative Hearings (OZAH) scheduled a public hearing to be held on March 31, 2017, by notice issued on February 22, 2017 (Exhibit 27). The Technical Staff of the Montgomery County Planning Department (Technical Staff or Staff) issued a report on March 16, 2017, recommending approval of the application, subject to seven conditions.

Exhibit 29. The Planning Board met on March 16, 2017, and voted unanimously (5-0) to recommend approval with the conditions recommended by Staff, but with a change to recommended Condition 5 to require only a long-term bicycle parking space. The Planning Board also recommended that the parking setback and screening requirements under Sections 59.6.2.5.K.2.b and 59.6.2.9.B.1, 2, and 3 of the Zoning Ordinance be waived, per Zoning Ordinance §59.6.2.10, as requested by the Applicant. These recommendations are contained in the Chair's letter of March 20, 2017. Exhibit 30.

No correspondence either for or against the application was received by either the Hearing Examiner or Technical Staff (Exhibit 29, p. 20).

The public hearing proceeded as scheduled on March 31, 2017. The Applicant called three witnesses – Elizabeth Kim, immediate past Chair of KCSC, on behalf of the organization (Tr. 16-28); Phillip S. Cho, current Chair of KCSC, as an expert on Landscape Architecture (Tr. 73-84); and Somer Cross, as an expert in land planning (Tr. 28-73).¹ Three residents of the neighborhood, Michael Glasby, Winston Thames and Julio Gonzalez, participated in the hearing, asking questions and raising concerns; however, none of them expressed opposition to the application. Tr. 84-97. Various revised plans and additional documents were filed at the hearing (Exhibits 31-40).

At the end of the hearing, the Hearing Examiner directed the Applicant to send copies of the documents filed at the hearing to Technical Staff for any comments they or other parties wished to make on or before April 10, 2017. The Applicant was also given until April 10 to brief

¹ Ms. Cross is an attorney and an employee in the law firm representing the Applicant, though she reportedly does not function as an attorney in the law firm. Tr. 99. Following a discussion at the hearing (Tr. 28-34), the Hearing Examiner asked Applicant's counsel to brief the propriety of the Applicant calling an employee of the law firm representing the Applicant as an expert witness in the case. Applicant timely filed its brief (Exhibit 44), and the Hearing Examiner is satisfied from the authority cited therein and attached thereto that there was no impropriety in the Applicant calling Ms. Cross as an expert witness in this case. Based on her resume (Exhibit 35) and the *voir dire* at the hearing (Tr. 34-40), the Hearing Examiner found Ms. Cross to be qualified to testify as an expert in land planning.

the issue described in footnote 1, above, and to specify how the surrounding neighborhood was defined in the existing Special Exception, S-1591. The other parties were given until April 17, 2017, to respond to the Applicant's brief, and the Applicant was given until April 21, 2017, for any reply. The record was scheduled to close at the close of business on April 21, 2017.

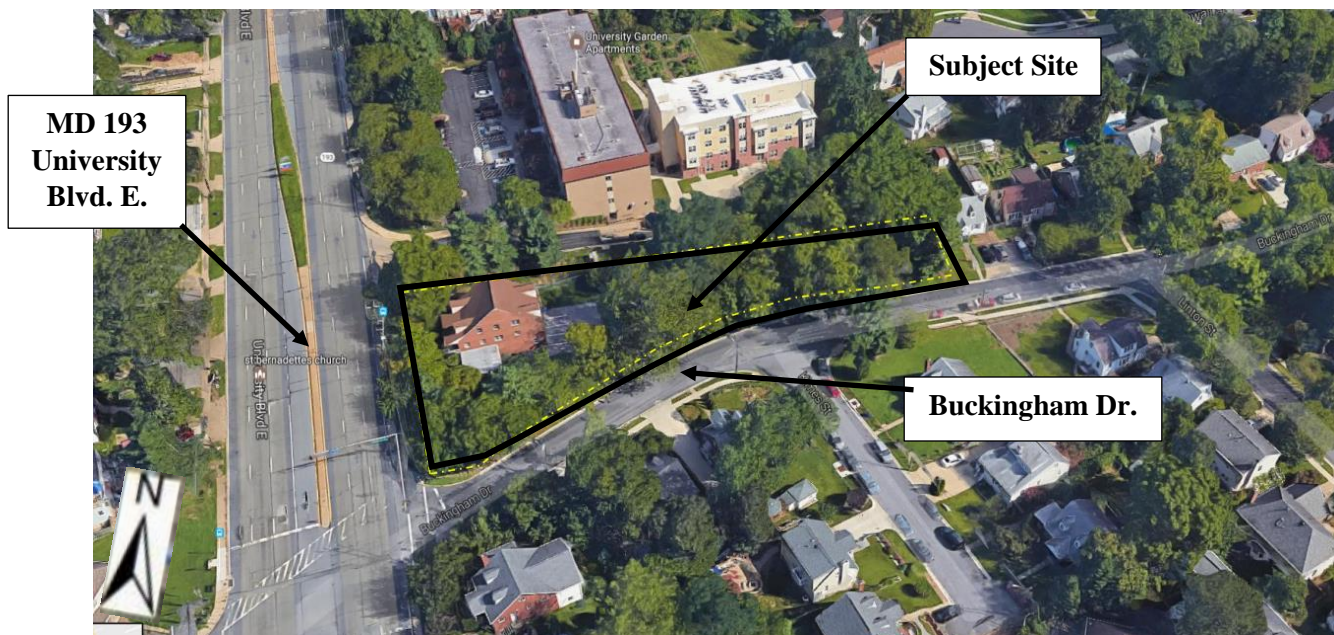
The Applicant forwarded copies of her new filings to Technical Staff on March 31, 2017 (Exhibit 42), and Staff indicated it had no additional comments (Exhibit 43). The Applicant filed her brief on April 10, 2017 (Exhibit 44 and attachments), and no parties responded thereto. No additional filings were made, except for the transcript, and the record closed, as scheduled, on April 21, 2017.

For the reasons set forth in this Report and Decision, the Hearing Examiner approves the conditional use application, subject to the conditions listed in Part IV.

II. FACTUAL BACKGROUND

A. The Subject Property

The subject site is located on the northeast corner of the intersection of MD 193 (University Boulevard East) and Buckingham Drive. It is shown below in an aerial photograph (Exhibit 36) provided by the Applicant:



Technical Staff described the subject site as follows (Exhibit 29, pp. 3-5):

The subject Property contains 23,552 square feet of land and is zoned R-60. On November 10, 1988, the Board of Appeals (BOA) approved a conditional use S-1591 (formerly known as a special exception) in the basement of the property for a non-resident medical practitioner. On June 13, 2013, the BOA approved a modification request for S-1591 to allow the addition of one non-resident practitioner to the practice for only two days a week. The approved non-resident medical practitioner's office has since vacated the premises and the above-grade basement space is empty. The proposed use will occupy the above-grade basement. KCSCGW leases the upper floors of the house as a residential rental unit which will continue separate from the requested application. . . .

The property is a corner lot, rectangular in shape, with 78 feet of frontage on University Boulevard-East and 340 feet of frontage on Buckingham Drive. It is developed with a 2-story one-family detached dwelling unit and a surface parking lot in the rear yard. The existing surface parking lot contains 9 parking spaces. Access to the site is from Buckingham Drive via a driveway entrance. There is no vehicular access to the site from MD 193. The intersection of MD 193 and Buckingham Drive is a signalized intersection with full movement in either direction along MD 193. A bus stop with shelter and bench is located directly in front of the site on MD 193 adjacent to an existing sidewalk. Pedestrian access to the site is from the sidewalk on MD 193 via a stone path which wraps around the house and leads to the surface parking lot.

Several large deciduous trees are in the front and side yards. Foundation plantings are located around the front of the dwelling unit. The entire rear yard contains large and mature deciduous trees. There are small evergreen shrubs at the entrance to the surface parking lot. All the existing trees and landscaping are well maintained. A 4-foot high chain-link fence runs along the entire length of the northern property line. The northern property line abuts property also owned by the KCSCGW which is developed as University Gardens I and University Gardens II, a multi-family mid-rise housing complex for seniors, approved under conditional use S-1424 in 1987. A board-on-board 6-foot high wooden fence is located along the rear property line of the subject site.

The Applicant also provided several photographs of the home on the site (Exhibit 13):





Rear
(East Side)



South Side
(Abutting Buckingham Drive)

B. Surrounding Neighborhood

For the purpose of determining the compatibility of the proposed use, it is necessary to delineate and characterize the “surrounding neighborhood” (*i.e.*, the area that will be most directly impacted by the proposed use). Staff proposed defining the boundaries of the surrounding neighborhood as “bounded to the north by Franklin Avenue, Northwest Branch Stream Valley Park to the east, Piney Branch Road (MD 320) to the south, and Long Branch Parkway to the west.” Exhibit 29, p. 6.

The Applicant’s land planner, Somer Cross, testified that in her opinion, Staff defined the neighborhood too broadly, including areas well beyond any significant effect from the proposed conditional use (Tr. 43-49):

My concern with the Staff Report’s recommended neighborhood description is that it is just overly board. It looks like staff attempted to incorporate the commercial uses down at the corner of University Boulevard and Piney Branch Road which is a half mile away from the site and it seems to me that with only 3 employees suggested at this use that is not likely to have much of an impact on that commercial area. Then to the north it looks like staff attempted to make an equal distant area going another half a mile north of the site. Therefore, creating a mile diameter, I guess, from top to bottom. Which seemed, again, overly broad for 3 employees. To the left and right the staff took the neighborhood boundary much further into the residential areas. Most of the impact, I would believe, for the

Ms. Cross submitted an alternative (and much smaller) definition of the neighborhood (Exhibit 22(b)), based on the neighborhood as defined by the Hearing Examiner in S-1424-A, the special exception granted in 2010 for the Korean Community Service Housing Corporation, the property immediately to the north of the subject site and under the same ownership.

The neighborhood as proposed by Technical Staff is depicted in a map in the Staff Report (Exhibit 29, p. 6), and the Applicant's proposed definition is superimposed in blue on Staff's map:



Just as the Applicant in the present case has argued, Petitioners' land planner in S-1424-A argued that the neighborhood as defined by Technical Staff was much too large and included properties that had no practical relationship to the subject property. The Hearing Examiner in S-1424-A agreed with the Petitioners' land planner in that case, finding that very little traffic would be produced by the proposed use, and that the proposed building in S-1424-A would not be visible beyond the adjacent properties to the north, south and west. Therefore, the Hearing Examiner held that it was not justifiable to define the general neighborhood as extending about a half a mile to the south, as Technical Staff had suggested. *See* Hearing Examiner's Report of June 4, 2010 in S-1424-A, p. 10.

Relying on that holding, Ms. Cross proposed the identical neighborhood definition to the one accepted in S-1424-A, arguing that (Tr. 46):

“... the area that the applicant submitted is identical believing that 1) it is under the same ownership. 2) It is actually less intensive than the use that is currently there. The current- the previous use on the property was for a medical practitioner which involved up to 4 employees and this will only have 3 employees. So it is smaller intensity.”

The Hearing Examiner agrees with Ms. Cross's argument. The neighborhood definition proposed by Technical Staff is far broader than the area likely to be impacted by the use proposed in this case. The service organization proposed in this case would have adequate parking and only 3 employees (arguably fewer than approved for the existing medical clinic special exception on the site (S-1591), which as modified in 2013, had two full-time employees and two part-time employees). The outer structure of the home already on the site would not be modified, so no visual impacts can be expected from the proposed use. In sum, the Hearing Examiner accepts the Applicant's definition of the surrounding neighborhood.²

² The Hearing Examiner also considered whether the Board of Appeals or Technical Staff had defined the surrounding neighborhood when the existing special exception on the site (S-1591) was granted in 1988 and modified in 2013 (Exhibits 9, 10 and 43(a)). As it turns out, neither Technical Staff nor the Board defined the neighborhood boundaries regarding S-1591, so the closest analogous neighborhood definition we have is the one provided in S-1424-A.

As discussed in S-1424-A, the surrounding neighborhood is bounded by East University Boulevard (MD 193), a six-lane highway to the west of the subject site; however, the neighborhood bulges further to the west to include those residences directly confronting the subject site, across University Boulevard (The bulge extends south to East Wayne Avenue). The other boundaries of the neighborhood would include properties on the north up to about Lowander Lane, as well as those residences to the rear of the property (*i.e.*, to the east) that may have a direct visual connection to the property, and on the south, residences along Buckingham Drive and East University Boulevard down to the Montgomery Knolls townhouse development, near Daleview Drive.

As reconfigured, the surrounding neighborhood is almost entirely in the R-60 Zone (Exhibit 33), although there is a small townhouse community located on Gloucester Knoll Drive, just to the North of the University Gardens complex, that is in the RT-12.5 Zone. The surrounding neighborhood consists of single-family detached homes, the University Gardens complex (S-1424), the townhouses on Gloucester Knoll, and the Mt. Jezreel Church and Senior Housing complex to the north of the subject site (S-2877). A wireless cell antenna exists on the roof of the University Gardens facility under special exception S-2639, and there is an accessory apartment (S-1081) at the corner of East University Boulevard and Wayne Avenue.

C. Proposed Use

The Applicant seeks approval of a conditional use to operate a service organization in the above-grade basement of the existing one-family house on the site. Technical Staff described the proposed layout of the site (Exhibit 29, p. 9):

. . . The proposed use will consist of 1,920 square feet. . . There will be no physical changes to the residence or the existing parking facility. The site plan proposes [7] parking spaces and [1 long term bicycle parking space].³ The

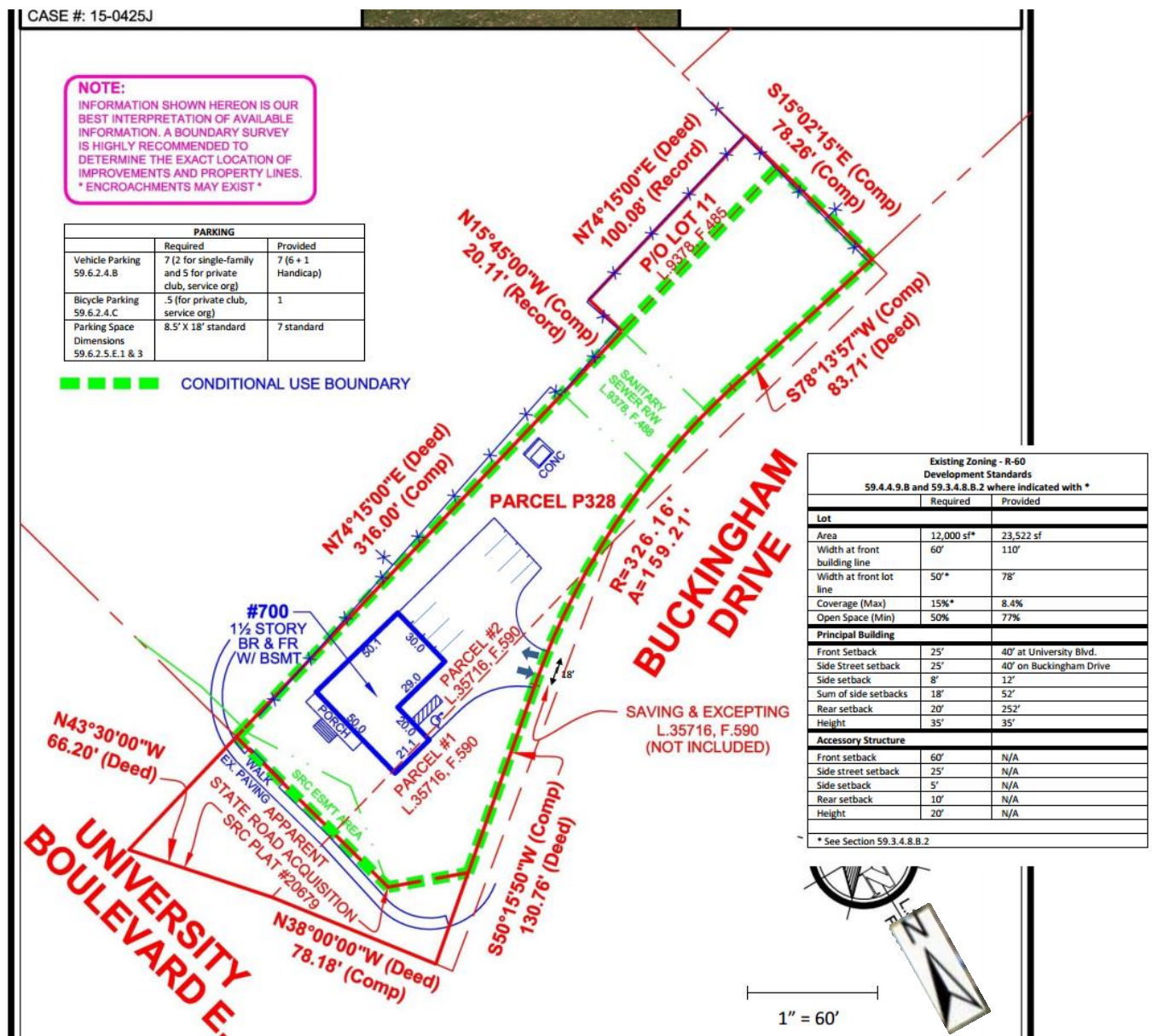
³ The quoted paragraph from the Technical Staff report indicated there would be 8 vehicle parking spaces, but the final site plan calls for only 7 vehicle parking spaces. Staff also provided for 2 bicycle parking spaces (one short term and one long term), but the Planning Board reduced that, at Applicant's request, to 1 long term bicycle space because that is all that is required by Zoning Ordinance §59.6.2.4.C. (Exhibit 30).

Applicant is requesting several waivers under Section 59.6.2.10 of the Zoning Ordinance related to parking facilities for conditional uses. These waivers . . . [will be discussed in the next section of the Report and Decision].

The Applicant is also providing 18,152 square feet of required open space on the site. No signage or additional landscaping is proposed by this use. No additional lighting is proposed by the applicant as the existing lighting, residential in nature, will remain unchanged. The KCSCGW will continue to lease the upper levels of the dwelling unit as a residential rental unit.

1. Site Plan

The Applicant's Revised Conditional Use Site Plan (Exhibit 37) is reproduced below:



The Applicant also provided a blowup (Exhibit 37(a)) of the Development Standards

Table on the Site Plan:

Existing Zoning - R-60 Development Standards 59.4.4.9.B and 59.3.4.8.B.2 where indicated with *		
	Required	Provided
Lot		
Area	12,000 sf*	23,522 sf
Width at front building line	60'	110'
Width at front lot line	50'*	78'
Coverage (Max)	15%*	8.4%
Open Space (Min)	50%	77%
Principal Building		
Front Setback	25'	40' at University Blvd.
Side Street setback	25'	40' on Buckingham Drive
Side setback	8'	12'
Sum of side setbacks	18'	52'
Rear setback	20'	252'
Height	35'	35'
Accessory Structure		
Front setback	60'	N/A
Side street setback	25'	N/A
Side setback	5'	N/A
Rear setback	10'	N/A
Height	20'	N/A
* See Section 59.3.4.8.B.2		

Consistent with the recommendation of Technical Staff and the Planning Board (Exhibits 29 and 30), conditions are imposed in Part IV of this Report and Decision requiring that the Applicant provide 2 parking spaces for the residents and 5 on-site parking spaces for employees and visitors, and that the Applicant upgrade the existing parking facility as follows:

Mark and stripe the surface parking lot to provide for orderly and safe on-site vehicular movements subject to approval by MCDPS. This includes reconfiguring the existing spaces to meet the required dimensions for perpendicular⁴ parking spaces of 8.5 feet x 18 feet and required dimensions for the ADA accessible space at the rear entrance and adding striping to delineate a pedestrian walkway at the rear entrance.

⁴ Technical Staff's recommended condition used the term "parallel" parking spaces. The Applicant corrected that to "perpendicular" at the hearing, and Staff did not object to the change (Exhibit 43).

2. Parking Facility Waivers Proposed by the Applicant

Although, the parking facility existing on the site provides enough parking spaces to satisfy statutory requirements, it lacks the full setbacks and screening required for parking facilities with 5 or more spaces. Therefore, the Applicant has requested two parking facility waivers under Section 59.6.2.10 of the Zoning Ordinance. Section 6.2.10 provides, in part:

The deciding body may waive any requirement of Division 6.2, except the required parking in a Parking Lot District under Section 6.2.3.H.1, if the alternative design satisfies Section 6.2.1. . . .

The Applicant did not request a waiver of the number of vehicle parking spaces required.

The parking facility waivers the Applicant is requesting are as follows:

- A one foot waiver of the 16-foot setback called for by Section 59.6.2.5.K.2.b for the minimum side yard setback along the northern property line of the parking facility (*i.e.*, leaving the existing 15-foot setback in place); and
- A complete waiver of the trees and other landscaping called for to the north of the existing parking lot by Section 59.6.2.9.B.1,2, and 3 for parking lots serving conditional uses.

At the hearing, Applicant's land planner, Somer Cross, testified that the requested one-foot setback waiver should be granted because the existing 15-foot parking lot setback along the northern property line would not impact compatibility, and in fact there should be an effort to increase communication and interaction between the subject site and the abutting property to the north, which is also owned by the Applicant (Tr. 54-56):

So the parking setback standards under the code would require twice the minimum setback requirement for the R 60 zone which would normally be 8 feet. Twice as much would be 16 feet setback for the parking lot. Currently there is 15 feet between the northern boundary line and the parking lot. Again the property shares that northern boundary line with another property that is owned by the same company. The same entity. The Korean Community Service Center. Therefore, I would think that you would want to encourage more communication and interaction between the two sites to allow the employees of one to come over and vice versa. It eliminates the need and purpose of the setback. I have reviewed staff's recommendations and their opinion says that something like the difference between a 15 foot setback and a 16 foot setback is not discernable to anybody who is going to be on the site. In addition we are not proposing any other changes on site other [than] restriping the very minimal that needs to be done and removing an additional

foot of that parking lot just seems more [inaudible] then it needs to be in this situation. The parking lot was approved with the medial professional that was put there because 8 feet was all that was required at the time. So it was a preexisting parking lot and doesn't seem to be harming anybody to have a 1 foot waiver. . . . It will not affect any compatibility with the surrounding neighborhood.

Ms. Cross reached a similar conclusion regarding the request for a parking lot landscaping waiver (Tr. 56):

Again the perimeter planting requirement on the northern boundary will preclude the interaction between the 2 sites under the same ownership. The whole general purpose when you have a perimeter planting and a setback requirement is to protect neighboring uses from any possible negative characteristics of the use on this site and here when they are under common ownership and common use then you would not necessarily need any kind of perimeter blockade between the 2 uses. What is there now should be sufficient to screen and maintain that residential character. It is already a very highly vegetated site and maintains that residential feel.

She also concluded that the subject site would be compatible with the waiver of the landscaping requirement. Tr. 58.

Applicant's expert in landscape architecture, Philip Cho, testified that there is no room immediately to the north of the existing parking lot in which to plant the trees and other plantings needed to satisfy the requirements of Zoning Ordinance §59.6.2.9.B. However, in his opinion, the lack of additional trees or other plantings in those areas would not affect compatibility with the surrounding property. Tr. 80.

Technical Staff and the Planning Board supported both waiver requests, in part because the property abutting the subject site on the north, where the setback and screening does not meet the standard, is also owned by the Applicant. Exhibit 29, pp. 1, 16-17; Exhibit 30, p. 1.

As to the setback issue, Technical Staff stated (Exhibit 29, p. 16-17):

To have the Applicant remove one foot of existing asphalt to meet this required setback would be onerous to the Applicant. The difference between a 15-foot setback and 16-foot setback is not discernible to staff or clients who visit the site or to nearby residents in the surrounding area. Staff supports the parking facility side yard waiver request.

With regard to the landscaping requirement, Technical Staff reached a conclusion similar

to the Applicant's expert witnesses (Exhibit 29, p. 17). Staff began by quoting §59.6.2.9.B:

If a property with a conditional use requiring 5 to 9 parking spaces is abutting Agricultural, Rural Residential, or Residential Detached zoned property that is vacant or improved with an agricultural or residential use, the parking lot must have a perimeter planting area that:

- 1. satisfies the minimum specified parking setback under Article 59-4 or, if not specified, is a minimum of 8 feet wide;*
- 2. contains a hedge, fence, or wall a minimum of 4 feet high; and*
- 3. has a minimum of 1 understory or evergreen tree planted every 30 feet on center.*

Staff then discussed why compliance with this provision was not advisable in this case:

Based on the above requirement, the existing parking facility would be required to have an 8-foot perimeter planting area along the its northern border and adjacent to the KCSCGW elderly housing complex. A 4-foot high chain-link fence runs along the entire length of the northern property line. The length of the existing parking facility along the northern property line is approximately 60 feet. As shown on the Applicant's Landscape Plan [reproduced below], landscaping is planted for approximately 26-feet along the edge of this parking facility. The remaining 34-feet of this parking facility along the northern property line, contains no trees or shrubs and does meet the 8-foot landscaping requirement. The Applicant has requested a waiver from the perimeter landscaping requirement for this portion of the parking facility.

Presently, the 26-foot long landscaped area contains shade and flowering trees for a depth of 9 feet, which screen a portion of this parking facility from the abutting residentially developed property. However, this abutting property to the north is also owned by the Applicant and developed under approved conditional use (S-1424) as a senior housing complex. The proposed conditional use will provide services for the elderly residents of this complex. Implementation of this section of the Zoning Ordinance by adding additional screening adjacent to the parking facility would essentially sever the linkage the two properties are trying to achieve by locating adjacent to each other. The existing 26-foot long landscaped area effectively screens the parking facility from the elderly housing complex and maintains the residential character of the area. Staff supports the Applicant's waiver request for relief from this landscaping requirement.

Finally, [the landscaping plan] shows that the rear yard contains a substantial amount of shade and flowering trees along with a 6-foot high board-on-board fence along the rear property line. This landscaping and the fence provide an adequate and effective screening for the existing parking facility and proposed conditional use from the abutting residential use to the east.

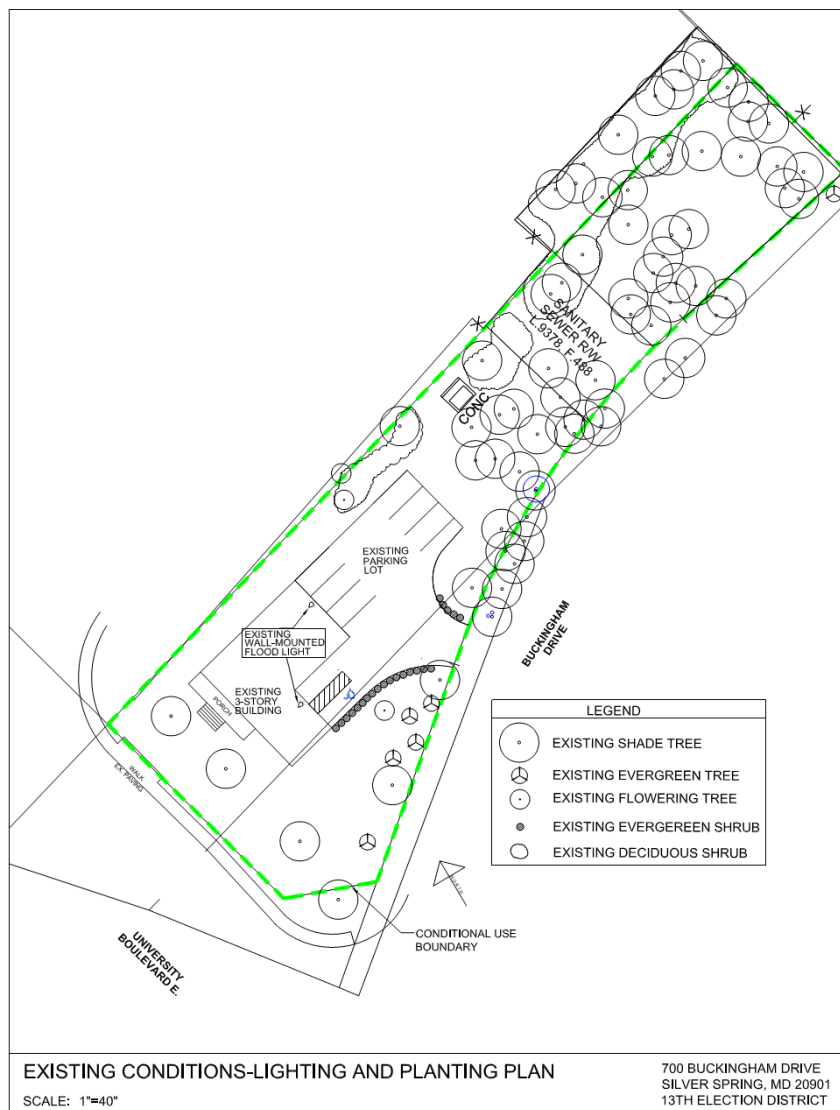
The Planning Board agreed with Technical Staff and suggested the following (Exhibit 30, p. 1):

The abutting property to the north also owned by the Applicant, is developed as a low-income elderly housing complex for Asian Americans. The Applicant stated the subject conditional use will also provide services to these residents. Planning Board Chair Casey Anderson noted that given the relationship between these two uses, the Applicant should consider a path connection between the two properties, if the subject conditional use is approved by the Hearing Examiner. . . .

Given this undisputed record, the Hearing Examiner finds that the requested parking facility waivers should be granted.

3. Site Landscaping, Lighting and Signage

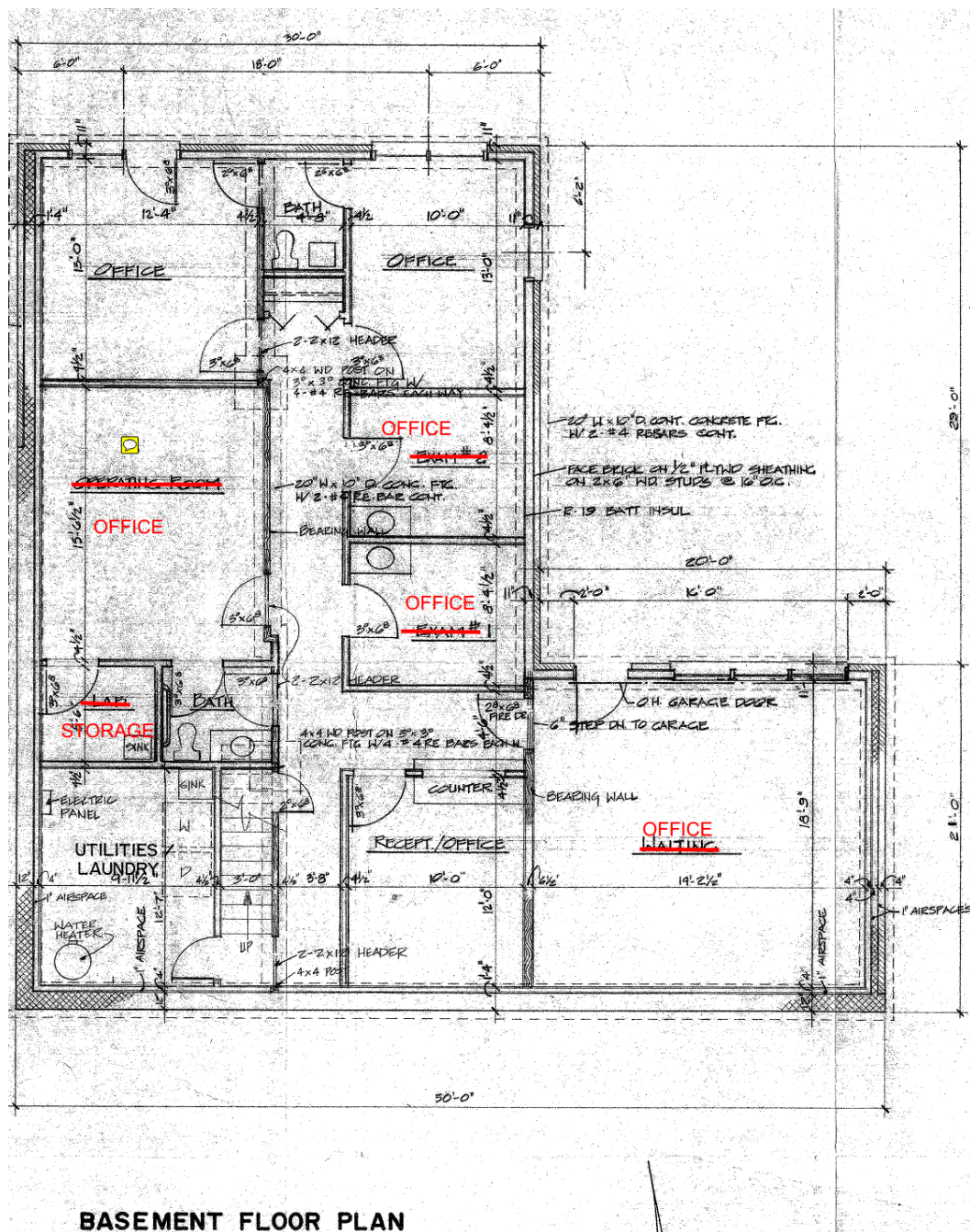
The landscaping and lighting on the site will remain unchanged if the application is approved. The existing lighting and landscaping are shown on the Revised Existing Conditions-Lighting and Planting Plan (Exhibit 40), reproduced below:



There is no need for additional landscaping or lighting. Technical Staff also confirmed that there is no signage on the site, and none has been sought in this application. Exhibit 29, p. 9. Therefore, a condition is imposed in Part IV of this Report and Decision prohibiting any signage.

4. Internal Physical Arrangements for Site Operations

The existing medical clinic special exception, which is now inactive, operated in the basement of the existing house. The proposed use will occupy the same area (1,920 square feet), as depicted in the following floor plan, with updated notations (Exhibit 28(b)):



5. Operations

The Applicant described its intended operations at the subject site in its “Statement of Operations” (Exhibit 8, pp. 2-3):

Since 1991, KCSC has operated low income senior apartments (HUD subsidized) on the neighboring property (440 University Blvd), immediately adjacent to the subject site. Through Special Exception S-1424 and subsequent amendments, the University Gardens site of KCSC accommodates 92 residential units for senior adults and persons with disabilities. The employees to be located at the Subject Property will serve members living in the adjacent senior housing project as well as other members in Montgomery County. Similar work/programs, if any, from the existing Riverdale and Silver Spring branches of KCSC may be consolidated into the offices proposed at the Subject Property. . . .

The basement space located in the existing structure on the Subject Property consists of 1,920 square feet. The applicant expects that a total of 2-3 staff/employees will use the space for their offices. The primary hours of operation will be between 9 a.m. and 5 p.m., Monday through Friday, and between 10 a.m. and 3 p.m. on Saturdays, with occasional additional small-group training sessions or meetings (of up to 8 per month) held during the week/weekend evenings. The occasional additional small-group training sessions/meetings that may be held in the evenings during the week/weekends will run no later than 9 p.m. The number of staff/employees and visitors anticipated to be on site at any one time during the week/weekend evenings is approximately 5-6 people. The type of work that these employees will be engaged in will primarily involve work done on the computer/phone, and providing consultations for visiting clients. There will be limited visits from members by appointment only during the primary hours of operations indicated above. There will be no bulk storage except for ordinary household items.

The Hearing Examiner has imposed a condition in Part IV of this Report and Decision limiting the number of on-site staff to 3 and requiring the Applicant to comply with its Statement of Operations (Exhibit 8).

D. Community Response

No correspondence either for or against the application was received from the community by either the Hearing Examiner or Technical Staff (Exhibit 29, p. 20). However, three residents of the neighborhood, Michael Glasby, Winston Thames and Julio Gonzalez, participated in the hearing, asking questions and raising concerns. None of these gentlemen expressed opposition, *per se*, to the application. Tr. 84-97.

Mr. Thames stated his concerns about the term “private club,” and wondered whether he would have access to it. He testified (Tr. 84-85):

. . . I am concerned about the wording of this proposal where it says a permit to bring in a private club service organization. . . . The word private is what bothers me because when you say private that means that you can exclude, as far as my understanding of the English language, you can exclude anybody that you feel the need to. . . Well, if it is private would you or would anybody else walk in asking for services or just walk in to get information because it says private so that means that it is for a select group of people. . . .

Applicant’s attorney, Soo Lee-Cho, replied (Tr. 86-87):

Well the terminology of private club, service organization is how the zoning ordinance describes the category but when you look at the definition of that use category. It is very broadly defined and in this particular instance . . . KCSC is a service organization. It is not a club in the manner and I think respect that is being testified to. I think you have heard testimony in regard to the mission and goal of the organization. It is a service organization but none the less the application has to be under the terminology private club, service organization. That is really the only reason why private club is part of the application.

Mr. Thames responded that even though it was called a service organization, it could be used as a private club in the future, and thereby exclude people. The Hearing Examiner noted that Applicant’s attorney was correct in describing the statutory characterization of this type of conditional use as a “private club, service organization.” Moreover, it is defined by Zoning Ordinance §59.3.4.8.A. as an entity that is not open to the public – “. . . *an association for civic, social, cultural, religious, literary, political, recreational or like activities, operated for the benefit of its members and not open to the public.*” [Emphasis added.] As explained by the Hearing Examiner, people have the freedom to associate with those with whom they choose to associate if the facility is defined as “not open to the public.” Tr. 87. Elizabeth Kim added that the Applicant has several programs in which it partners with different ethnic groups, and if anyone is interested, they could always make an appointment or register into KCSC programs. Tr. 96-97.

Mr. Thames’ other concern was that the facility might be used for large gatherings, such as weddings, thereby creating unwanted traffic. The Hearing Examiner assured him that if the

conditional use is granted, it would be strictly restricted by enforceable conditions limiting on-site staff and visitors. Tr. 88-89.

Julio Gonzales raised a question about the number of parking spaces, and how many were allocated to the residents of the house. He was apprised that 2 parking spaces are allocated to the residents of the house, and the rest (5) will be used by the proposed conditional use. The medical clinic special exception that was active on the site has been abandoned. Tr. 90-92.

Michael Glasby testified with a suggestion and a question. Tr. 92-95. He suggested that when the Applicant is planning to do something like the proposed conditional use, it should reach out to the civic associations that are directly adjacent and say what it is planning to do, instead of having rumors spread misinformation. He also asked whether there will be any public funding going toward this use? Elizabeth Kim responded that the Applicant will receive the benefit of a bond bill from the State of Maryland for maintenance, specific to the renovation of the property.

To address the neighbors' concerns, the Hearing Examiner has imposed the following four conditions in Part IV of this Report and Decision:

1. The private club, service organization conditional use is limited to 3 on-site staff, and their activities must comply with its Statement of Operations (Exhibit 8).
2. The private club, service organization is limited to 1,920 square feet of space as shown on the revised Site Plan and the Basement Floor Plan.
3. The hours of operation are Monday through Friday from 9:00 a.m. to 5:00 p.m. and 10:00 a.m. to 3:00 p.m. on Saturdays. There may be limited visits from members by appointment only during the primary hours of operations. Up to 8 meetings per month may be held on either weekday evenings or weekend evenings. These evening meetings must end by 9:00 p.m., and the number of staff and visitors on site at any one time is limited to 6 people.
4. Five on-site parking spaces must be provided for employees and visitors of the conditional use, with an additional two parking spaces allocated for the residents of the subject site.

As with the other conditions imposed by the Hearing Examiner, these conditions can be enforced by the Department of Permitting Services.

In sum, the evidence is that the proposed use, as conditioned by the Hearing Examiner, will address the concerns expressed by the neighbors.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific and general. General standards are those findings that must be made for almost all conditional uses. *Zoning Ordinance*, §59.7.3.1.E. Specific standards are those which apply to the particular use requested, in this case, a Private Club, Service Organization. *Zoning Ordinance* §59.3.4.8.

Weighing all the testimony and evidence of record under the “preponderance of the evidence” standard specified in *Zoning Ordinance* §59.7.1.1, the Hearing Examiner concludes that the conditional use proposed in this application, as governed by the conditions imposed in Part IV of this Report and Decision, would satisfy all of the specific and general requirements for the use.

A. Necessary Findings (Section 59.7.3.1.E.)

The general findings necessary to approve a conditional use are found in Section 59.7.3.1.E of the Zoning Ordinance. Standards pertinent to this review, and the Hearing Examiner’s conclusions for each finding, are set forth below:⁵

E. Necessary Findings

1. To approve a conditional use application, the Hearing Examiner must find that the proposed development:

- a. satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended;***

⁵ Although §59.7.3.1.E. contains six subsections (E.1. through E.6.), only subsections 59.7.3.1.E.1., E.2. and E.3. contain provisions that arguably apply to this application. Section 59.7.3.1.E.1. contains seven subparts, a. through g.

Conclusion: As noted by Technical Staff, the existing medical clinic special exception on the site (S-1591) has been abandoned. Exhibit 29, p. 7. Therefore, the Hearing Examiner has followed the recommendation of the Technical Staff and the Planning Board to impose a condition requiring that S-1591 be revoked by the Board of Appeals, as abandoned, prior to issuance of a use-and-occupancy permit for the proposed use on the site.

b. satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59-6;⁶

Conclusion: This subsection requires an analysis of the standards of the R-60 Zone contained in Article 59-4; the use standards for a Private Club, Service Organization contained in Article 59-3; and the applicable development standards contained in Article 59-6. Each of these Articles is discussed below in separate sections of this Report and Decision (Parts III.B, C, and D, respectively). Based on the analysis contained in those discussions, the Hearing Examiner finds, as did Technical Staff (Exhibit 29, pp. 12-26), that the application satisfies the requirements of Articles 59-3, 59-4 and 59-6.

c. substantially conforms with the recommendations of the applicable master plan;

The subject property lies within the geographic area covered by the *2000 East Silver Spring Master Plan*. The Master Plan does not specifically discuss the subject site, but it recommends “Provid[ing] community facilities to meet the human service, recreational, security, educational and other needs of the diverse community.” MP, p. 8. This goal is echoed on page 28 of the Master Plan, which states the objectives of supporting “adequate social, employment, and health facilities and services to meet the needs of area residents” and “supporting the involvement of public, private, and faith-based organizations in addressing area service needs.” At the same time,

⁶ The underlined language was added by the Council when the 2014 Zoning Ordinance was amended effective December 21, 2015, in ZTA 15-09 (Ordinance No. 18-08, adopted December 1, 2015).

the Master Plan confirms the current zoning and emphasizes that “special exception uses should be compatible with the existing residential character” of the neighborhood. MP, p. 26.

As summarized by Technical Staff (Exhibit 29, p. 13):

The KCSCGW proposes to develop a service organization on the site. This service organization will provide a variety of social and economic services to the Asian-American community in East Silver Spring. The Master Plan supports the provision of social service organizations that address the needs of recent immigrants and long-time county residents. Under the requested use, the land use patterns of the surrounding area remain unchanged. The proposed use will be compatible with the existing area’s residential character as no alterations are proposed to the one-family house or property. The proposed use is in conformance with the recommendations of the Master Plan for establishing social service organizations thereby creating livable communities for this diverse population group.

The Applicant’s land planner, Somer Cross, agreed with Technical Staff’s analysis (Tr. 59-60):

I would concur with staff’s analysis that while this master plan does not make a specific recommendation for this site, it does in general support this use. In first it confirms the existing zoning that was there when the master plan was adopted which again the medical practitioner special exception office use was already in existence at that time. So there by reconfirming this is a site that would be qualified for a special exception or conditional use. Secondly the master plan repeatedly encourages facilities in this area for social service organizations. . . . There is a quote on page 28 of the master plan that talks about some service organizations need larger facilities and new location and this master plan supports effort to address all of these needs. It is almost as if the master plan itself was created for this use. It is a multicultural center in a multicultural area that from a planning perspective is best if it can be located right next door to the other multicultural center that is going to be working with. It resolves all the environmental impacts. Also discussed in the master plan if the 2 offices can coexist and work together and travel back and forth you would have less air pollution of trying to go find another office location anywhere else offsite. You are going to have less air pollution, less traffic congestion. It should not create any more impact of this use then the preexisting medical office because you are having fewer people on site.

Conclusion: There is no evidence in the record contrary to Technical Staff’s findings and Somer Cross’s opinion on this issue. Based on this record and the language of the Master Plan, the Hearing Examiner concludes that the proposed conditional use substantially conforms with the recommendations of the applicable *2000 East Silver Spring Master Plan*.

d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;

Conclusion: Technical Staff found that the proposed use meets this standard (Exhibit 29, p. 23):

The proposed use will be harmonious with the character of the surrounding one-family neighborhood. There are no new structures or surface parking areas proposed by this conditional use. The existing landscaping and vegetation will continue to maintain the property's residential appearance. The activities and traffic conditions associated with the use will be limited to specific hours of operation and days of the week, as stated in the recommended conditions of approval. Therefore, the proposed use will not alter the character of the surrounding neighborhood in a manner inconsistent with the Master Plan.

The Hearing Examiner concludes that the proposed use “*is harmonious with and will not alter the character of the surrounding neighborhood*” because it will remain a single-family, detached residence in a residential neighborhood; no external modifications to the house are planned; and the only physical changes to the site will be the restriping of the existing parking lot and the internal renovation of the basement to convert the space occupied by the abandoned medical clinic special exception into a space suitable for the proposed service organization use. As noted above, it is consistent with the applicable Master Plan.

e. will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;

Conclusion: The defined neighborhood, as reduced by the Hearing Examiner from Technical Staff's definition, contains the following special exceptions – the existing special exception on the subject site (S-1591), which will be revoked as abandoned; the University Gardens complex (S-1424); the Mt. Jezreel Church and Senior Housing complex to the north of the subject site (S-2877); a wireless cell antenna on the roof of the University Gardens facility (S-2639), and an accessory apartment (S-1081) at the corner of East University Boulevard and Wayne Avenue.

The Hearing Examiner finds that the substitution of the proposed conditional use for the existing special exception on the site will not result in an overconcentration of special exceptions or conditional uses in the area; nor will it affect the area adversely or alter the residential nature of the area. Moreover, the provision in question also specifies that “*a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area,*” and as noted above, the proposed use is consistent with the Master Plan. Thus, the Hearing Examiner finds that this standard has been met.

f. will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:

i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or

ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; and

Conclusion: According to Technical Staff, the application does not require approval of a preliminary plan of subdivision since no new construction is proposed. Exhibit 29, p. 24.

Therefore, under §59.7.3.1.E.1.f.i, quoted above, the Hearing Examiner must determine whether the proposed development will be served by adequate public services and facilities.

By its nature, a small service organization operating within an existing single-family residence will not ordinarily create significant additional burdens for schools, police and fire

protection, water, sanitary sewer and storm drainage. As observed by Technical Staff (Exhibit 29, p. 24):

. . . No school age children will be generated by the proposed use therefore, a school facility payment is not required. Additionally, the Applicant obtained an exemption letter from the MCDPS [Exhibit 28(d)] stating the property is exempt from stormwater management requirements.. . .

Moreover, the expert analysis by Technical Staff did not find significant impacts on transportation facilities from the proposed conditional use. Technical Staff analyzed that impact in accordance with Local Area Transportation Review (LATR) and Transportation Policy Area Review (TPAR), as set forth in Exhibit 29, pp. 15-16:

Local Area Transportation Review (LATR)

The proposed use will generate vehicular trips during the weekday morning (6:30 to 9:30 a.m.) and evening (4:00 to 7:00 p.m.) peak periods. The subject conditional use application is not required to submit a full LATR traffic study because the site will generate fewer than 30 vehicular trips. As a result of this exemption, the Applicant submitted a traffic statement that summarized a petition for 1,920 square feet of general office. Based on the 2013 LATR trip generation rate, the proposed use would generate two fewer morning peak-hour trips and three fewer evening peak-hour trips than the previously approved medical office use (Table 2 [below]). As a result of the decrease in site generated traffic during the morning and evening peak periods, the traffic generated by the proposed conditional use would not adversely impact the existing traffic conditions.

**TABLE 2
SUMMARY OF SITE TRIP GENERATION
PROPOSED GENERAL OFFICE**

	AM Peak Hour			PM Peak Hour		
	In	Out	Total	In	Out	Total
Previously Approved Special Exception¹						
Medical Office ² (1,920 SF)	4	1	5	2	5	7
Proposed Conditional Use						
General Office ³ (1,920 SF)	2	1	3	1	3	4
Net New Peak Hour Trips	-2	0	-2	-1	-2	-3

¹ At the time of approval, this use was subject to the special exception review process.

² ITE Trip Generation Manual, 9th Edition: Land Use Code: 720 (Medical-Dental Office Building)

³ January 2013 LATR/TPAR Guidelines.

Transportation Policy Area Review (TPAR)

New developments within the Silver Spring/Takoma Park Policy Area must satisfy the Transportation Policy Area Review (TPAR) test by making a one-time payment

equal to 25 percent of the general district impact tax. The proposed conditional use however, is not subject to this TPAR payment because it will not increase the building square footage and will generate fewer trips than the previously approved medical office space. Therefore, the proposed development satisfies Adequate Public Facility (APF) requirements and does not necessitate further transportation analysis.

With regard to environmental facilities, Technical Staff found (Exhibit 29, p. 20):

There are no champion trees on or near the property. The Forest Conservation Law does not apply to the requested conditional use, because the property is less than 40,000 square feet. A non-applicability form [Exhibit 15] was signed by Staff on December 13, 2016, and was included in the submittal package. No forest conservation or environment issues are associated with this proposed use.

Technical Staff concluded that “The property is served by adequate public services and facilities.” Exhibit 29, p. 24. Based on this record, the Hearing Examiner finds that the proposed development will be served by adequate public services and facilities. LATR standards have been met, and the substitution of the proposed conditional use for the existing special exception will not unduly burden public facilities.

g. will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:

- i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;***
- ii. traffic, noise, odors, dust, illumination, or a lack of parking; or***
- iii. the health, safety, or welfare of neighboring residents, visitors, or employees.***

Conclusion: This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood.

Inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” Zoning Ordinance, §59.1.4.2. *Non-inherent adverse effects* are “adverse

effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” Id.

As specified in §59.7.3.1.E.1.g., quoted above, inherent adverse effects, alone, are not a sufficient basis for denial of a conditional use. However, non-inherent adverse effects in the listed categories, alone or in conjunction with inherent effects in those categories, are a sufficient basis to deny a conditional use. Nevertheless, the existence of a non-inherent adverse effect does not mean that an application for a conditional use must be denied. Rather, it means that it can result in denial if the Hearing Examiner finds that such a non-inherent adverse effect, either alone or in combination with inherent adverse effects, creates “undue harm to the neighborhood” in any of the categories listed in Zoning Ordinance §59.7.3.1.E.1.g.

Analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a Private Club, Service Organization. Characteristics of the proposed use that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed use that are not consistent with the characteristics identified *or* adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects then must be analyzed, in the context of the subject property and the surrounding neighborhood, to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

In analyzing potential adverse effects, Technical Staff considered the size, scale, scope, light, noise, traffic and environmental effects of the proposed use. Staff determined that the following physical and operational characteristics are necessarily associated with (*i.e.*, are inherent in) a Private Club, Service Organization (Exhibit 29, p. 24): (1) vehicular trips to and from the site; (2) hours of operation, (3) noise generated by additional traffic to the site, and (4)

lighting. The Hearing Examiner agrees with that listing of inherent characteristics of a Private Club, Service Organization, but would add one other inherent characteristic: (5) parking associated with the use.

Technical Staff characterized “the location of the existing surface parking lot in the rear of the site” as a non-inherent characteristic. Exhibit 29, p. 25. The Hearing Examiner does not agree. One would typically expect a Private Club, Service Organization to have associated parking, and the fact that such parking already exists does not make it a non-inherent characteristic. If the layout of parking on the site were to create unusual characteristics that could potentially have adverse effects on the neighborhood, the Hearing Examiner would agree with Staff’s characterization of the parking as “non-inherent,” but there is no evidence that that is the case here. On the contrary, parking to the rear of the house helps to preserve the residential feel of the neighborhood without impinging on any other property.

Staff then examined the potential impacts of the proposed use (Exhibit 29, p. 25):

With the development conditions as proposed by staff, there are no adverse traffic impacts that would result from the proposed conditional use. The existing driveway on Buckingham Drive will serve staff and visitors to the site. The Applicant will limit the hours of operation and the number of employees. All lighting is adequate and consistent with the residential character of the neighborhood. The site is landscaped with mature trees and shrubs that are well maintained.

. . . With the recommended conditions of approval, for hours of operation, number of staff, and vehicular movements into and out of the site, as well as the continued maintenance of on-site landscaping and screening, the proposed use will be acceptable and would not create adverse impacts sufficient to result in denial of this conditional use.

Staff concluded, “The proposed development will not cause undue harm to the neighborhood as a result of non-inherent adverse effect alone or in the combination of inherent and a non-inherent adverse effect of the defined categories.” Exhibit 29, p. 24.

The Hearing Examiner agrees with Staff’s conclusion in this regard. While any conditional use may have some adverse effects on the neighbors (*e.g.*, from traffic, parking and

lighting), there is no characteristic of the proposed use or the site that would differentiate the effects of this proposed Private Club, Service Organization from any other such facility. Thus, the Hearing Examiner finds no non-inherent adverse effects.

Moreover, the concerns raised by the neighbors (as discussed in Part II.D. of this Report and Decision) can be, and have been, addressed by conditions imposed by the Hearing Examiner in Part IV of this Report and Decision.

The Hearing Examiner finds that the proposed Private Club, Service Organization, as limited by the conditions imposed in Part IV of this Report and Decision, will not cause undue harm to the neighborhood as a result of adverse effects in any of the categories listed in §59.7.3.1.E.1.g.

2. Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.

Conclusion: As observed by Technical Staff (Exhibit 29, p. 25), this provision is “[n]ot applicable, [since] no construction, reconstruction or [external] alteration of existing structures is proposed by this conditional use.” The only alterations to the structure will be internal, so that the new conditional use can function in the space previously occupied by a medical clinic. The Hearing Examiner therefore agrees with Staff’s conclusion that the proposed internal alterations to the structure will not alter compatibility with the neighborhood.

3. The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require conditional use approval.

Conclusion: The application satisfies all specific requirements for the conditional use, and as discussed above, the proposed use will be compatible with the neighborhood. The Hearing Examiner concludes that, with the conditions imposed in Part IV of this Report and Decision, the conditional use should be approved.

B. Development Standards of the Zone (Article 59.4)

In order to approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the zone where the use will be located – in this case, the R-60 Zone. Development standards for the R-60 Zone are contained §59.4.4.9.B. of the Zoning Ordinance. Staff compared the minimum development standards of the R-60 Zone to those provided by the application in a Table included in the Staff Report (Exhibit 29, p. 12), and reproduced below. Only the portion of the Table that pertains to the standards of the R-60 Zone under Article 59-4 is reproduced in this section. The remainder of the Table concerns development standards set forth in Article 59-6 (regarding parking), and those standards will be discussed in Section III.D. of this Report and Decision.

Table 1 Development Standards

Development Standards	Required	Proposed
Minimum Lot Area (59.4.4.9.B.1)	6,000 sf	23,522 sf
Minimum Lot Width (59.4.4.9.B.1) <ul style="list-style-type: none"> At front building line At front lot line 	60 ft. 25 ft.	110 ft. 78 ft.
Maximum Lot Coverage (59.4.4.9.B.1)	35%	8.4%
Minimum Building Setback (59.4.4.9.B.2) <ul style="list-style-type: none"> Front Side Rear 	25 ft. 8/25 ft. 20 ft.	40 ft. 12/40 ft. 252 ft.
Maximum Building Height (59.4.4.9.B.3)	35 ft.	35 ft.

Conclusion: As can be seen from the above Table, the proposed use more than meets all the development standards of the R-60 Zone, as provided in Zoning Ordinance §59.4.4.9.B., and the Hearing Examiner so finds.

C. Use Standards for a Private Club, Service Organization (Section 59.3.4.8.)

The specific use standards for approval of a Private Club, Service Organization are set out in Section 59.3.4.8. of the Zoning Ordinance. Standards applicable to this application are:

A. Defined

Private Club, Service Organization means an association for civic, social, cultural, religious, literary, political, recreational or like activities, operated for the benefit of its members and not open to the public.

Conclusion: The Applicant describes itself as follows in its Statement of Operations (Exhibit 8, p. 1):

The Korean Community Service Center of Greater Washington is a non-profit organization that provides comprehensive services to Asian Americans in the Washington, DC area. Since 1974, they have provided services to both citizens and recent immigrants in the fields of health, immigration, elder care, and family support programs. KCSC provides cultural and linguistic programs to address language barriers, housing and job placement, and other social needs to assist Koreans and other Asian American visitors and immigrants to become acclimated to the United States.

As such, the Hearing Examiner finds that the proposed use meets the definition of a Private Club, Service Organization.

B. Use Standards

1. Where a Private Club, Service Organization is allowed as a limited use, and the subject lot abuts or confronts property zoned Agricultural, Rural Residential, or Residential Detached that is vacant or improved with an agricultural or residential use, site plan approval is required under Section 7.3.4.

Conclusion: Not applicable. The proposed use requires a conditional use in the R-60 Zone.

2. Where a Private Club, Service Organization is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:

a. The minimum lot area required is twice the minimum required for a detached house building type in the zone, up to a maximum of 3 acres.

Conclusion: As stated by Technical Staff (Exhibit 29, p. 21),

The subject property is located in the R-60 Zone which requires a minimum lot size of 6,000 square feet. The property contains 22,522 square feet, more than twice the minimum required (12,000 square feet) for the requested conditional use. This requirement has been met.

The Hearing Examiner agrees with Technical Staff that the lot area of the subject site exceeds the minimum standards set forth in this provision, and also notes that it does not exceed the maximum lot area of 3 acres. The Hearing Examiner so finds.

b. The minimum lot width at the front lot line is twice that required for a detached house.

Conclusion: As shown in the Development Standards Table reproduced on page 30 of this Report and Decision, the minimum lot width of a detached house at the front lot line is 25 feet in the R-60 Zone. The subject Property has a lot width of 78 feet, more than twice that required for a detached house. The Hearing Examiner therefore finds that this requirement has been met.

c. The maximum coverage allowed is 15%, including accessory buildings, or 20,000 square feet, whichever is less.

Conclusion: As shown in the Development Standards Table reproduced on page 30 of this Report and Decision, the subject Property has a lot coverage of only 8.4%, well below the maximum of 15% set forth in this provision. The Hearing Examiner finds that this requirement has been met.

d. The minimum open space requirement is 50%.

Conclusion: The Applicant submitted an “Open Space Exhibit” (Exhibit 16), shown below:



It demonstrates that the subject site has 18,152 square feet of open space. That amounts to 77.2% of the total site area of 23,522 square feet, which clearly exceeds the 50% minimum requirement. The Hearing Examiner therefore finds that this requirement has been met.

e. In the AR zone, this use may be prohibited under Section 3.1.5, Transferable Development Rights.

Conclusion: This provision is not applicable, since the site is located in the R-60 zone, not in the AR Zone.

In sum, the Hearing Examiner finds that the application satisfies all of the use standards for a Private Club, Service Organization in Zoning Ordinance §59.3.4.8., as well as the general Conditional Use standards contained in Zoning Ordinance §59.7.3.1, discussed in Part III.A., above.

D. General Development Standards (Article 59.6)

Article 59.6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs. The applicable requirements, and whether the use meets these requirements, are discussed below.

1. Site Access Standards

Conclusion: Zoning Ordinance Division 59.6.1 governs “Site Access;” however, by its own terms, as stated in §59.6.1.2., Division 59.6.1 does not apply to development in single-family residential zones, such as the R-60 Zone involved in this case. Moreover, no site access issues have been raised in this case.

2. Parking Spaces Required, Parking Facility Design and Parking Lot Screening

The standards for the number of parking spaces required, parking setbacks and parking lot screening are governed by Division 6.2 of the Zoning Ordinance. The required spaces and setback standards are referenced in the Table and notes on page 12 of the Staff report (Exhibit 29). It is reproduced below:

Development Standards	Required	Proposed
Parking Requirements (59.6.2.4)	7 spaces	7 spaces ¹
Minimum parking setback (59.6.2.5.K.2) <ul style="list-style-type: none"> • Side • Rear 	16 ft. 20 ft.	15 ft. ² 200 ft.

¹ Under the Zoning Ordinance, 1,000 square feet per GFA with a baseline minimum of 2.50 spaces is required for a private club, service organization. The proposed use will consist of 1,920 square feet; thus 5 parking spaces are required for this use. The Applicant is providing 5 on-site parking spaces for the proposed use and two parking spaces for the residential rental use.

² The required side yard setback for a parking facility is two times the minimum 8 foot required setback. The existing parking facility is sited 15 feet from the northern side yard and cannot meet this setback requirement. A waiver for 1-foot from the 16-foot side yard setback for the parking facility is requested. Staff supports the waiver request.

a. Number and Design of Parking Spaces Required by Sections 59.6.2.4 and 5

Conclusion: As can be seen from the above Table, Section 59.6.2.4 of the Zoning Ordinance requires a total of 7 parking spaces for the subject site (2 spaces for the single-family dwelling unit and 5 for the conditional use). The parking for a Private Club, Service Organization is calculated by applying the specified baseline minimum of 2.5 spaces per 1,000 square feet of gross floor area (GFA) to the actual gross floor area planned for the use (1,920 square feet). Applying the baseline minimum of 2.5 spaces per 1,000 square feet of GFA calls for a total of 4.8 parking spaces, which rounds up to 5 spaces. The Applicant complies by providing 5 on-site parking spaces for the conditional use and 2 for the residence.

In addition to the number of parking spaces, Technical Staff points out that changes to the design of the parking spaces are need to comply with Section 59.6.2.5 (Exhibit 29, p. 14):

The Application proposes maintaining the on-site surface parking lot accessed via the driveway on Buckingham Drive. Minor changes to the striping of the existing surface lot are needed to comply with Section 59.6.2.5 of the Zoning Ordinance. They include elongating the existing striping so that each parking space meets the minimum 18-foot length requirement, the 8.5-foot width requirement, and preserves the 20-foot drive aisle between the two rows of parking spaces. The parking space closest to the rear entrance will need to meet the design standards for ADA accessibility, which includes the dimensions for vehicle and adjacent aisle space. On-street parking is restricted on the north side of Buckingham Drive adjacent to the site.

The Applicant has agreed to the condition recommended by Technical Staff requiring restriping of parking spaces as outlined above. The Hearing Examiner has imposed such a condition in Part IV of this Report and Decision, and finds that the proposal is compliant with the Zoning Ordinance's vehicular parking space requirements.

The Applicant will also comply with Sections 59.6.2.4.C and 59.6.2.6.A. by providing one long-term, weather-protected bicycle parking space on the site.⁷ A condition imposed in Part IV of this Report and Decision requires that the final dimension and location of the long-term bicycle parking space be coordinated with the Montgomery County Department of Permitting Services (MCDPS), prior to issuance of a use-and-occupancy permit for the proposed use.

b. Parking Setbacks, Screening and Landscaping

The issues of setbacks and screening for the parking facility were discussed at length in Part II.C.2. of this Report and Decision. As noted there, the parking facility existing on the site lacks the full setbacks and screening required for parking facilities with 5 or more spaces. Therefore, the Applicant has requested two parking facility waivers under Section 59.6.2.10 of the Zoning Ordinance. Section 6.2.10 provides, in part:

The deciding body may waive any requirement of Division 6.2, except the required parking in a Parking Lot District under Section 6.2.3.H.1, if the alternative design satisfies Section 6.2.1. . . .

The parking facility waivers the Applicant is requesting are as follows:

- A one foot waiver of the 16-foot setback called for by Section 59.6.2.5.K.2.b for the minimum side yard setback along the northern property line of the parking facility (*i.e.*, leaving the existing 15-foot setback in place); and
- A complete waiver of the trees and other landscaping called for to the north of the existing parking lot by Section 59.6.2.9.B.1,2, and 3 for parking lots serving conditional uses.

⁷ Technical Staff originally recommended 2 bicycle parking spaces for the site (Exhibit 29, p. 2, Recommended Condition 5), but at the Applicant's request, the Planning Board reduced that to one long-term space (Exhibit 30), which is consistent with the requirements of Zoning Ordinance §59.6.2.4.C. The Hearing Examiner accepts this revised recommendation.

At the hearing, Applicant's land planner, Somer Cross, testified that the requested one-foot setback waiver should be granted because the existing 15-foot parking lot setback along the northern property line would not impact compatibility, and in fact there should be an effort to increase communication and interaction between the subject site and the abutting property to the north, which is also owned by the Applicant (Tr. 54-56). Ms. Cross reached a similar conclusion regarding the request for a parking lot landscaping waiver (Tr. 56) – that the subject site would retain compatibility even with the waiver of the landscaping requirement. Tr. 58.

Applicant's expert in landscape architecture, Philip Cho, testified that there is no room immediately to the north of the existing parking lot in which to plant the trees and other plantings needed to satisfy the requirements of Zoning Ordinance §59.6.2.9.B. However, in his opinion, the lack of additional trees or other plantings in those areas would not affect compatibility with the surrounding property. Tr. 80.

Technical Staff and the Planning Board supported both waiver requests, in part because the property abutting the subject site on the north, where the setback and screening does not meet the standard, is also owned by the Applicant. Exhibit 29, pp. 1, 16-17; Exhibit 30, p. 1.

As to the setback issue, Technical Staff noted that “The difference between a 15-foot setback and 16-foot setback is not discernible to staff or clients who visit the site or to nearby residents in the surrounding area.” Exhibit 29, p. 16-17.

With regard to the landscaping requirement, Technical Staff reached a conclusion similar to the Applicant's expert witnesses. Staff stated (Exhibit 29, p. 17):

Implementation of this section of the Zoning Ordinance by adding additional screening adjacent to the parking facility would essentially sever the linkage the two properties are trying to achieve by locating adjacent to each other. The existing 26-foot long landscaped area effectively screens the parking facility from the elderly housing complex and maintains the residential character of the area. Staff supports the Applicant's waiver request for relief from this landscaping requirement.

The Planning Board even suggested that the Applicant should consider adding a path connecting the subject site with the property to the north, which the Applicant also owns. (Exhibit 30, p. 1).

Conclusion: Based on this undisputed record and analysis, as set forth in greater detail in Part III.C.2. of this Report and Decision, the Hearing Examiner finds that Applicant's proposed setbacks for the parking area and Applicant's proposed parking facility landscaping are sufficient to screen the parking activity, while maintaining compliance, under the proposed waivers, with the intent of Division 6.2 of the Zoning Ordinance. He therefore grants the requested waivers.

3. Site Landscaping, Screening and Lighting

Standards for site lighting are set forth in Division 6.4 of the Zoning Ordinance, and the standards for landscaping and screening are mainly set forth in Division 6.5.

a. Lighting

Zoning Ordinance §59.6.4.4.E. provides:

E. Conditional Uses

Outdoor lighting for a conditional use must be directed, shielded, or screened to ensure that the illumination is 0.1 footcandles or less at any lot line that abuts a lot with a detached house building type, not located in a Commercial/Residential or Employment zone.

By its own terms (in §59.6.4.2), Division 6.4 does not apply to existing, unmodified lighting:

Division 6.4 applies to landscaping required under this Chapter, the installation of any new outdoor lighting fixture, and the replacement of any existing outdoor fixture. Replacement of a fixture means to change the fixture type or to change the mounting height or location of the fixture. [Emphasis added.]

Technical Staff reports that (Exhibit 29, p. 20):

Existing lighting [on the site] is mounted on the rear wall of the dwelling unit and adjacent to the entrance of the proposed conditional use. Both fixtures will remain. The existing lighting is residential in nature and will not create a problem with illumination on abutting properties.

Conclusion: As discussed in Part II.C.3. of this Report and Decision, no new lighting is planned for this conditional use, and therefore the Hearing Examiner finds that the requirements of

Division 6.4, regarding lighting, do not apply. Nevertheless, the Hearing Examiner accepts Technical Staff's finding that the existing lighting is residential in nature and will not create a problem with illumination on abutting properties. The Hearing Examiner thus finds that the site lighting is compatible with the neighborhood.

b. Site Screening and Landscaping

Conclusion: Although some provisions in this portion of the Zoning Ordinance contain very specific screening requirements, the review of site landscaping and screening for conditional uses in single-family, detached homes is limited to an assessment of compatibility. Zoning Ordinance §59.6.5.2.B. This language is reinforced by Section 59.7.3.1.E.1.b., under which the Hearing Examiner need only find that the proposed use meets applicable general requirements under Article 59-6 "to the extent the Hearing Examiner finds necessary to ensure compatibility. . ."

Technical Staff described the existing landscaping and screening on the subject site as follows (Exhibit 29, p. 5):

. . . Several large deciduous trees are in the front and side yards. Foundation plantings are located around the front of the dwelling unit. The entire rear yard contains large and mature deciduous trees. There are small evergreen shrubs at the entrance to the surface parking lot. All the existing trees and landscaping are well maintained. A 4-foot high chain-link fence runs along the entire length of the northern property line. . . . A board-on-board 6-foot high wooden fence is located along the rear property line of the subject site.

Staff also notes that there will be no changes to the landscaping, and "The existing on site landscaping and vegetation will continue to ensure the compatibility of this conditional use with the surrounding neighborhood." Exhibit 29, p. 20.

Both of Applicant's expert witnesses – land planner Somer Cross and landscape architect Phillip Cho – also testified that the existing landscaping and screening was sufficient to maintain compatibility with the neighborhood. Tr. 58 and 80.

Based on this record, the Hearing Examiner therefore finds that the existing site landscaping and screening are sufficient to ensure compatibility with the surrounding neighborhood and thus will meet the requirements of the Zoning Ordinance.

4. Signage

Conclusion: The use of signage is governed by Zoning Ordinance Division 6.7. Although Zoning Ordinance §59.6.7.8.A.1 sets the standards for signs in Residential Zones, no sign is proposed for the subject conditional use. Exhibit 29, p. 9. Therefore, the Hearing Examiner has imposed a condition in Part IV of this Report and Decision which will prohibit the Applicant from posting a sign on the property.

IV. CONCLUSION AND DECISION

As set forth above, the application meets all the standards for approval in Articles 59-3, 59-4, 59-6 and 59-7 of the Zoning Ordinance. The proposed conditional use complies with the general conditions and the standards for approval of a conditional use for a Private Club, Service Organization, subject to the recommended conditions of approval. The proposed conditional use is consistent with the objectives and recommendations of the Master Plan, will not alter the residential character of the surrounding neighborhood, and will not result in any unacceptable noise, traffic, or environmental impacts on surrounding properties.

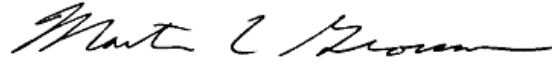
Based on the foregoing findings and conclusions and a thorough review of the entire record, the application of the Korean Community Service Center of Greater Washington, Inc. (CU 17-12), for a conditional use under Section 59.3.4.8. of the Zoning Ordinance, to operate a Private Club, Service Organization in the above-grade basement of the existing one-family, detached house at 700 Buckingham Drive, in Silver Spring, Maryland, is hereby **GRANTED**, subject to the following conditions:

1. The Private Club, Service Organization conditional use is limited to 3 on-site staff, and their activities must comply with Applicant's Statement of Operations (Exhibit 8).

2. The private club, service organization is limited to 1,920 square feet of space as shown on the revised Site Plan and the Basement Floor Plan.
3. The hours of operation are Monday through Friday from 9:00 a.m. to 5:00 p.m. and 10:00 a.m. to 3:00 p.m. on Saturdays. There may be limited visits from members by appointment only during the primary hours of operations. Up to 8 meetings per month may be held on either weekday evenings or weekend evenings. These evening meetings must end by 9:00 p.m., and the number of staff and visitors on site at any one time is limited to 6 people.
4. Five on-site parking spaces must be provided for employees and visitors of the conditional use, with an additional two parking spaces allocated for the residents of the subject site.
5. The Applicant must provide one long-term weather-protected bicycle parking space on the site. The final dimension and location of the long-term bicycle parking space should be coordinated with the Montgomery County Department of Permitting Services (MCDPS) prior to issuance of a use-and-occupancy permit for the proposed use.
6. The Applicant must upgrade the existing parking facility as follows:
Mark and stripe the surface parking lot to provide for orderly and safe on-site vehicular movements subject to approval by MCDPS. This includes reconfiguring the existing spaces to meet the required dimensions for perpendicular parking spaces of 8.5 feet x 18 feet and required dimensions for the ADA accessible space at the rear entrance and adding striping to delineate a pedestrian walkway at the rear entrance.
7. Prior to the issuance of a use-and-occupancy permit, the Applicant must obtain approval of the Board of Appeals for the revocation of the existing, approved special exception use on the site (S-1591), which has now been abandoned.
8. The Applicant must not erect a sign on the subject site.
9. The Applicant must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the conditional use premises and operate the conditional use as granted herein. The Applicant shall at all times ensure that the conditional use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services.

10. Pursuant to Zoning Ordinance §59.6.2.10, and in accordance with the recommendation of the Planning Board, the Hearing Examiner hereby waives:
- a. one foot of the 16-foot side yard setback required by Zoning Ordinance §59.6.2.5.K.2.b. along the northern property line of the parking facility; and
 - b. the requirement of §§59.6.2.9.B.1, 2, and 3 for specified parking lot landscaping.

Issued this 5th day of May, 2017.



Martin L. Grossman
Hearing Examiner

NOTICE OF RIGHT TO REQUEST ORAL ARGUMENT

Any party of record may file a written request to present an appeal and oral argument before the Board of Appeals, within 10 days after the Office of Zoning and Administrative Hearings issues the Hearing Examiner's Report and Decision. Any party of record may, no later than 5 days after a request for oral argument is filed, file a written opposition to it or request to participate in oral argument. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. A person requesting an appeal, or opposing it, must send a copy of that request or opposition to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

Contact information for the Board of Appeals is listed below, and additional procedures are specified in Zoning Ordinance §59.7.3.1.F.1.c.

The Board of Appeals may be contacted at:

Montgomery County Board of Appeals
100 Maryland Avenue, Room 217
Rockville, MD 20850
(240) 777-6600

<http://www.montgomerycountymd.gov/boa/>

The Board of Appeals will consider your request for oral argument at a work session. Agendas for the Board's work sessions can be found on the Board's website and in the Board's office. You can also call the Board's office to see when the Board will consider your request. If your request for oral argument is granted, you will be notified by the Board of Appeals regarding the time and place for oral argument. Because decisions made by the Board are confined to the evidence of record before the Hearing Examiner, no new or additional evidence or witnesses will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the work session.

Parties requesting or opposing an appeal must not attempt to discuss this case with individual Board members because such *ex parte* communications are prohibited by law. If you have any questions regarding this procedure, please contact the Board of Appeals by calling 240-777-6600 or visiting its website: <http://www.montgomerycountymd.gov/boa/>.

NOTICES TO:

Korean Community Service Center of Greater Washington, Inc., Applicant

Soo Lee-Cho, Esquire, Applicant's attorney

Elizabeth Kim

Phillip S. Cho

Somer Cross

Michael Glasby, Neighboring property owner

Winston Thames, Neighboring property owner

Julio Gonzalez, Neighboring property owner

Barbara Jay, Executive Director

Montgomery County Board of Appeals

Kathy Reilly, Planning Department

Ehsan Motazed, Department of Permitting Services

Alexandre A. Espinosa, Director, Finance Department